

EXHIBIT “7”

house before the Harmons moved into that home. (Tr. at p. 1573.) Agnes Frump then moved into Angeline Maliknak's house. Maurice testified that after the tidal wave, he had lived for a period of time with his uncle James Fadaoff in the Chabitnoy house. (Tr. at p. 1575.)

Maurice Harmon identified his mother as being Nettie Fadaoff Hartle, and listed his siblings who comprised the Harmon clan. (Tr. at pp. 1574-1575.) Maurice Harmon served in the National Guard along with his brother Paul, his brother Danny, and William Robertson, who also testified at the hearing in Anchorage. (Tr. at pp. 1575-1576.) His brother Danny later joined the Army, and was killed in Vietnam. (Tr. at p. 1577.) Maurice Harmon selected the gravesite of Danny on Woody Island at the spot where Danny Harmon had indicated he had wanted to build a cabin. (Tr. at p. 1577.)

Maurice was on Woody Island in 1970. He specifically recalls having visited his brother's gravesite and spent a weekend overhauling a seine net on Woody Island. (Tr. at p. 1577.) Maurice testified that in 1970 he had planned on moving back to Woody Island, and stated that it felt very good to be back on Woody Island. (Tr. at pp. 1577-1578.)

Maurice Harmon described the death of Agnes Frump in a boating accident near Termination Point. (Tr. at p. 1578.) He described Brenda Frump as having been adopted out prior to his mother's death, and then Harold and Mary Ann Frump as having been put into the Mission. (Tr. at p. 1579.)

Maurice Harmon attended the Woody Island Territorial School through the eighth grade. (Tr. at p. 1579.)

Maurice Harmon identified Edson Fadaoff, Sr. as being his uncle, and Mary Pavloff as being his aunt. (Tr. at pp. 1579-1580.) He stated that Mary Pavloff's uncle Herman

Ponchene also lived on Woody Island. (Tr. at p. 1580.) Maurice Harmon identified a number of people pictured in photographs of Woody Island. For example, from the David Fadaoff Collection, Phot 6-2, Maurice Harmon identified his mother, Anastasia "Nettie" Fadaoff Hartle seated on a log near the Woody Island dock; his sister-in-law, Charlotte Fadaoff, and her son, Alex (Lexi was Alex Sr.'s nickname) Fadaoff, Jr., as well as her other son, David Fadaoff. (Tr. at pp. 1580-1581.) Likewise, Maurice Harmon reviewed Phot 6-6 from the David Fadaoff Collection and identified it as depicting his sister Leanna Harmon and his brother Jimmy Hartle. He stated that the photograph of the two children on Woody Island "looks almost like it was beside the shed down at Granny's." (Tr. at pp. 1581-1582.) From the James Hartle Collection, Phot. 15-3, Maurice identified his half brother, Leisnoi shareholder Ronald Fadaoff, as well as Johnny Pavloff, Cecil Chabitnoy, and himself. Mr. Harmon even recalled the name of the dog in the photograph, Snuffy. (Tr. at p. 1583.) Again, Maurice Harmon was able to identify the specific location on Woody Island where the photograph was taken. He stated the picture was taken "up by our house, because that's Mom's clothesline back there." (Tr. at p. 1583.) Maurice Harmon also identified Phot 15-6 as being a picture of himself, his sister Rayna, his brother Danny, and his brother Jimmy. (Tr. at p. 1583.) Again, the witness identified the specific location on Woody Island where the photograph was taken. He stated "That was taken on the jumping hill." (Tr. at p. 1583.)³²

Maurice Harmon's description of life on Woody Island, his verification of people in photographs and identification of the specific location the photographs were taken, and his

³²A photograph of "the jumping hill" situated near the mass grave of the 1918 Spanish Flu victims is pictured in Phot 25-2.

description of specific incidents and people on Woody Island, such as Johnny Maliknak's Uncle Nickolai, who barely spoke any English and used to sing Aleut songs, painted a picture of a living, vibrant community on Woody Island that rebut any allegation that the Native Village of Woody Island was some sort of a "phantom village."

Maurice Harmon identified a number of people who lived for a period of time on Woody Island in 1970. These include Nicholas William Pavloff, Sr.,³³ who was married to Mary Pavloff; Johnny Maliknak; his brother Paul Harmon, who at that time was fishing on the *Banshee*, a small purse seiner; his brother James Hartle, who was also fishing on the *Banshee* then and who would also repair nets on Woody Island in 1970; and Rudy Sundberg, Jr., whom Maurice identified as being a cousin of Johnny Maliknak. (Tr. at pp. 1585-1587.)³⁴

³³In an article authored by Yule Chaffin entitled "On Woody Island Life is Good", L-Doc 78, she states that Woody Island "is especially rich in early history. It is here that some of the descendants of one of the oldest families in Alaska, Pavloff, still live." Yule's article corroborates the longstanding historical ties the Pavloff family, depicted in L-Chart 6, has with Woody Island. In March of 1982, Yule Chaffin eulogized Nick Pavloff, L-Doc 79, recounting the life of Nick Pavloff on Woody Island, and describing his marriage, offspring, and some of the important events in his life. The document also shows the important role the Pavloff family has played on Woody Island throughout the years.

³⁴ Maurice Harmon also identified a number of people who had lived on Woody Island during the 1960s, including:

1. Angeline Pavloff Maliknak, whom he identified as being Johnny's [Maliknak] mother, Agnes' [Pavloff] mother. [These relationships are depicted in L-Chart 6 and L-Chart 34];
2. Rudy Sundberg, Jr.;
3. Herman, Natalie, and Johnny Ponchene, whom he identified as being related to Mary Ponchene, married to Nicholas Pavloff;
4. William Wilfred Pavloff (Arlene Simpler also verified Wilfred Pavloff as being a resident on Woody Island in the 1960's, see, Affidavit of Arlene Simpler, L-Doc 353);

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5. Agnes Pavloff Frump, the mother of Harold Frump King (who testified at the hearings in Anchorage);
 6. Nicholas William Pavloff, Sr., and his son William Nicholas Pavloff;
 7. Mary Ponchene Fadaoff Pavloff, the wife of Nicholas Pavloff;
 8. Maurice Harmon's grandmother Fekla Ella Fadaoff Chabitnoy;
 9. His aunt, Natalie Simeonoff who was living in the Simeonoff house when Maurice was growing up on Woody Island;
 10. His brother Alexander John Fadaoff, Sr., and his wife, Charlotte Fadaoff White;
 11. Maurice Harmon's brother James;
 12. Freddie Simeonoff, whom Maurice Harmon identified as having been killed in a helicopter crash in Vietnam;
 13. Kelly Simeonoff, Jr. (who testified at hearings in Kodiak), who Maurice Harmon identified as being the brother of Freddie Simeonoff;
 14. Maurice Harmon's nephew, David James Fadaoff, and David's older brother, Alexander John Fadaoff, Jr.;
 15. Christina Simeonoff Hoen, who Maurice Harmon identified as being "my cousin Freddie's sister";
 16. Joseph Fadaoff, whom Maurice Harmon identified as being "Uncle Edson's son", for whom he used to babysit in Edson Fadaoff's house on Woody Island;
 17. Buddy Fadaoff, the brother of Edson Fadaoff who disappeared mysteriously while traveling to cash a check;
 18. James Fadaoff, and his common-law wife Rosemary Challiak, who Mr. Harmon identified as having died when "they got in an argument and he lost his temper and hit her too hard";
 19. Maurice Harmon's uncle, Mickey Chabitnoy, with whom he used to hunt on Woody Island and Long Island;
 20. Maurice Harmon's uncle Cecil Chabitnoy, who Maurice Harmon stated had also gone to Fort Ord with him, for boot camp, and also had joined the National Guard;
 21. His younger sister Rayna Joyce Harmon Lohse Monroe Austerhouse Wheatman, who Maurice Harmon stated "changed husbands like most people changed socks";
 22. Maurice Harmon's sister, Leanna, who was friends with Mary Ann Frump while growing up;
 23. Maurice Harmon's brother, Mitch Komm Gregoroff (who testified at the hearings in Anchorage);
 24. Maurice Harmon's brother Paul Harmon (who testified at the hearing in Anchorage);
 25. Peter Simeonoff, whom Maurice Harmon identified as being "younger than Kelly Simeonoff, Jr., and older than Freddie"; and

Maurice Harmon testified he spent three days and nights on Woody Island in 1970 while repairing seine nets for the fishing boat *Shane*. (Tr. at p. 1601.) He testified that the structures still on existence on Woody Island in 1970 "had stoves and everything", rebutting the contention of Omar Stratman that there were no Native residences remaining on Woody Island in 1970. (Tr. at p. 1609.) Maurice Harmon testified on cross examination that in 1970 he was already discussing moving back to Woody Island with his wife. (Tr. at pp. 1622-1623.) In response to a question "What was the home that you intended to be to?" [*sic*], Maurice Harmon responded "Woody Island. We had already been discussing this with my brothers down there for the last five or six years...we were just talking about moving back to Woody Island." (Tr. at p. 1623.) When asked why he wanted to move back to Woody Island, Maurice Harmon explained "That's our roots." Maurice Harmon testified that his brothers were also in favor of moving back. (Tr. at pp. 1623-1624.)

Maurice Harmon lived for a period of time on Woody Island in 1970 and he intended Woody Island to be his home even when absent from that place. The witness' testimony showed that Woody Island was the center of Native family life, the place where the witness had his roots, and the location of the gravesite of his brother.

26. Girogi Nekeferoff, whom Maurice Harmon described as "the one living in the log cabin that my brother eventually tore down" and who spent a great deal of time in jail on Kodiak Island;
(Tr. at pp. 1585-1597.)

Maurice Harmon is listed in the November 8, 1974 Alaska Native Enrollment for Woody Island, BIA Exhibit 2A.³⁵ The interpretation of the law is set forth in the RD is flawed. It suggests that this Board must declare Maurice not to have been a resident of Woody Island because he “basically lived where there was work or schooling... Once again, it is the lack of

³⁵Although there may at one time have been a question as to whether Maurice Harmon had sufficient Native blood quantum to qualify as eligible for benefits under the Alaska Native Claims Settlement Act, he does, in fact, have the requisite Native blood. This point is clear by a review of his ancestry at L-Chart 5. Maurice's mother was Leisnoi shareholder and Woody Island villager Anastasia "Nettie" Fadaoff (born on Woody Island in 1911, died 1974). Maurice's grandparents were Woody Island villager, mission child Nicholas Fadaoff (1888-1932, buried on Woody Island), and Woody Island villager, mission child Fekla "Ella" Kornilov Chabitnoy (1891-1970). Moreover, the finality of the Secretary's decision for enrollment goes only as to the “determination of sufficient blood quantum for individual placement on the Roll.” *Ayakulik*, VE #74-98 at p. 6; *Village of Council*, VE #74-47 at p. 13. Thus, Natives such as Maurice Harmon whose names appear on the Alaska Native Enrollment Family List for Woody Island, L-Doc 385, but not the Alaska Native Roll Village - Woody Island, L-Doc 384, still count towards the 13 persons who actually lived for a period of time on Woody Island in 1970. Stratman has not challenged the blood quantum of any of the Leisnoi shareholders, and, at any rate, any such challenge is easily disproved by a review of the genealogical trees. See, e.g., L-Chart 5. In the unlikely event this Board were to find that Natives who signed the enrollment papers to enroll to Woody Island, lived on Woody Island for a period of time in 1970, and are listed in the Alaska Native Enrollment Family List for Woody Island cannot be counted towards the 13 persons who enrolled to the village and used it as a place where they actually lived for a period of time in 1970, simply because their names do not also appear on the Alaska Native Roll Village - Woody Island, then this Board should order the BIA to correct its Alaska Native Roll Village - Woody Island to add thereto the names of the persons on the Alaska Native Enrollment Family List for Woody Island who have sufficient blood quantum to be eligible. Persons who filled out enrollment papers, as evidenced by their answers reflected in the Alaska Native Enrollment Family List for Woody Island, L-Doc 385, and have sufficient blood quantum to qualify as eligible, but for some reason have not been listed by the BIA on the Alaska Native Roll Village - Woody Island, L-Doc 384, include Maurice Harmon, Paul Harmon, Charles Allen Madsen, Jacqueline Adams Madsen, Charles Naughton, Alexander John Fadaoff, Sr., Alexander John Fadaoff, Jr., and Nick Andy Pavloff, Jr. The IBLA should make sure that the Department of the Interior “has it right” before sending this case back to federal court. What may have been an administrative error on the part of the BIA in failing to include on the Alaska Native Roll Village - Woody Island certain Natives with sufficient blood quantum who timely filled out the paperwork enrolling to Woody Island, should not now be utilized as a basis for penalizing the village.

employment opportunities that stands out as the primary reason for choosing not to live in the alleged Village up through 1970.”

The RD invites this Board to commit legal error. It asks this Board not to implement the definition of permanent residence at 25 CFR 43h.1(k) that “recognizes the frequently transient life style of Alaska Natives... [W]here economic, educational, or other requirements have temporarily deprived one of any real choice, and both the subjective intent and the objective evidence indicate a genuine connection with the place of enrollment, that place is considered to be the permanent residence of the individual within the meaning of 25 CFR 43h.1(k).” *Afognak*, VE 74-7 at pages 12-13. Maurice Harmon, who grew up on Woody Island, discussed with his brothers in 1970 his desire to move back to the village, and was physically present in the village in 1970, is not stripped of his permanent residency status merely because economic or educational requirements forced him to work and send his children to school elsewhere.

5. **Paul Harmon** (born 1941) is another one of the Harmon clan who lived in the Woody Island village for a period of time in 1970, testified at the hearings, and has longstanding ties to Woody Island. Paul's half brother is Mitch Komm Gregoroff (born 1937), who was born on Woody Island and lived on Woody Island for a period of time in 1970. Paul's brothers include Maurice W. Harmon (born 1942), a Leisnoi shareholder who lived on Woody Island for a period of time in 1970 and is described above, and Daniel L. "Danny" Harmon (born 1947, died in Vietnam in 1967). His sisters are 1960s resident Woody Island villager Leanna Ellen Harmon (born 1949) and Rayna Joyce Harmon (born 1944), a Leisnoi shareholder and Woody Island villager. Another half brother is James G. Hartle (born 1952),

a Leisnoi shareholder and Woody Island villager who lived for a period of time on Woody Island in 1970 and testified at the hearings in Anchorage. Paul Harmon's father was Woody Island villager Raymond Royal Harmon, Sr. (1912-1946). Paul Harmon's mother was Anastasia Fadaoff (born on Woody Island in 1911, died 1974), a Leisnoi shareholder and Woody Island villager. His grandfather was Nicholas Fadaoff (1888-1932, buried on Woody Island). His grandmother was matriarch and Woody Island villager Fekla "Ella" Kornilov Chabitnoy (1891-1971). (L-Chart 5; L-Doc 108 at Tab 4, pp. 7-8.)

Paul Harmon authenticated a large number of photographs he has collected and taken of life on Woody Island, labeled the "Paul Harmon Photographic Collection", Phot 22-1 through 22-17. (Tr. at pp. 1656-1657.) His collection includes photographs on Woody Island taken in 1920, and during the period 1951 through 1965. Included in the collection are photographs of the vessel *Hawkeye* on Woody Island in 1957; the *FedAir IV* unloading at the Woody Island dock in 1965 in which are depicted Mitch Gregoroff as well as John Maliknak; the Harmon children on Woody Island in 1952; Woody Island in the early 1920s; Naustia Harmon in front of Ella Chabitnoy's house in 1919; Paul, Jimmy, and Freddie Simeonoff near the Chabitnoy home and the Simeonoff home in 1953; Charlie Johnson at the Harmon house in 1955; Johnny Maliknak with Cecil Chabitnoy behind the Angeline Maliknak home on Woody Island in the mid-1950s; Judy and Earl Komm on Woody Island in the 1950s; Margie Fadaoff at the Simeonoff home in the mid-1950s; Paul Maurice and Jimmy Harmon beside the Harmon house in 1952; and Mike Chabitnoy with beaver pelts in front of the Chabitnoy home on Woody Island in 1951.

Paul Harmon took most of the pictures himself. (Tr. at p. 1661.) The pictures that he took and described in his testimony plainly rebut the contention of the Protestant that the Native Village of Woody Island was some sort of a "phantom village." Paul Harmon described a number of the photographs of life on Woody Island. For example, he testified that Photograph 22-7 showed some of the Mission girls on Woody Island; Photograph 22-6, one of the ones that Paul Harmon did not personally take, depicted his mother, Anastasia Fadaoff, at age 15 or 16 standing in front of Ella Chabitnoy's house on Woody Island; and Photograph 22-8 shows Paul Harmon, Jimmy Hartle, and Freddie Simeonoff "Taken right in front of the, the Harmon house, looking down at my grandmother's house, Edson Fadaoff's house. And that was Simeonoff's house." (Tr. at pp. 1661-1663.)

Reviewing Phot 1-3, Overlay 2, as labeled by his brother, Maurice Harmon, Paul Harmon stated that Maurice had accurately labeled the overlay, but testified that the photograph did not show some of the houses that were in the area. (Tr. at p. 1663.) He testified that in the North Village area, beyond the area depicted in the photograph, "There would have been Urei's house here, or approximately here (indicating). And then there was, Pete Tunohun's house would have been right about here, also (indicating)." (Tr. at p. 1663.) Paul Harmon testified also that "You had Nickolai Maliknak's house down by the lake." (Tr. at p. 1664.) When asked which of the structures pictured in Photo 1-3, Overlay 2 he had slept in at anytime, Paul Harmon testified "This house, the Frump house; the Pavloff house, Fadaoff house; the Simeonoff house; the -- I lived in all of them." (Tr. at p. 1665.) When asked to explain why he would have spent the night in houses other than the Harmon house, the witness responded "Well, I was a kid. I was, I was just around, and just anywhere where we stopped, that's

where we stayed." (Tr. at p. 1665.) Exhibit A to his May 18, 1995 affidavit (Doc. 124) depicts a number of structures and sites in the Woody Island Village.

Paul Harmon testified that he was on Woody Island at least four or five times in 1970, and that he had spent the night on Woody Island off the boat. (Tr. at p. 1683.) **One purpose in going to the village was to visit his brother Danny's grave.** (Tr. at p. 1665.) He testified "I was running the *Banshee* at the time, and we used to tie up at the dock and went to the house. We would go around to what we call Una Lake, anchor the boat in there, and go swimming up in the lake." (Tr. at p. 1665.) Paul Harmon testified that he never saw Yule Chaffin while he was swimming on the lake next to her cabin: "We were on her doorstep and we never seen her." (Tr. at p. 1666.) He testified that he also had little contact with personnel from the FAA: "The only time I ever seen anybody from FAA was one time I was tied up at the boat and Woody Island boat came in because somebody was sick. And they had to cross over our boat to get off the Woody Island boat." (Tr. at p. 1666.) Thus, there was little interaction between the FAA personnel and the Native Woody Island villagers, such that these groups of people rarely saw each other although they were living on the same island. His affidavit recounts that "To this day I have wanted to move back to Woody Island on a permanent basis. It is where my roots and heritage are." Doc. 124 at paragraph 12. At the hearings, Paul Harmon described Woody Island as being "nice, quiet, peaceful...not much people running around shouting. No cars. Just quiet." (Tr. at p. 1688.) He stated he would "definitely make it my home." Paul's presence on Woody Island in 1970 was corroborated by testimony of his brother Maurice, Tr. at p. 1586. Lifelong Woody Island resident Johnny

Maliknak also verified that Paul Harmon resided on Woody Island at various times during the period April 1, 1960 through April 1, 1970. L-Doc 176.

Other persons who lived for a period of time on Woody Island in 1970, according to Paul Harmon, were Johnny Maliknak and Nick Pavloff who "were living up in what you call the Frump house"; his brother Mitch Gregoroff, who had fished on the *Joel B*; his brother Maurice, who had been fishing on the fishing boat *Shane*; his brother James, who had been fishing on the *Banshee* with Paul in 1970." (Tr. at pp. 1665-1669.)

Paul Harmon stated that he liked growing up on Woody Island. He gave examples of activities in which he engaged as a child, such as picking salmon berries, blueberries and high bush cranberries. (Tr. at p. 1669.) His grandmother, Ella Chabitnoy, grew strawberries in her gardens. (Tr. at p. 1669.) He testified that Yule Chaffin had a large garden and that "we used to raid it all the time." (Tr. at p. 1670.) Paul Harmon helped work his grandmother's two gardens as well as his own garden below the Harmon house "Until we got old enough to go fishing. Then we lucked out." (Tr. at p. 1670.) He testified that his family "ate a lot of rabbit, I'll guarantee you, and ducks. And once in a while we would get a deer." Paul testified that they also dug a lot of clams, and ate octopus. Paul Harmon described foods that they would gather on Woody Island at low tide, and explained that "Our mother showed us how to eat sea biscuits, what part of them to eat. Then there's little deal, plaque things that grows on the sides of rocks. You peel them off and eat the tongue off of them. None of these had to be cooked..." Tr. at p. 1672.) Describing plants that grew on the island that he ate, Paul Harmon mentioned "poochkey", a plant with large leaves on them that had been edible stock in the early

spring. (Tr. at p. 1691.) He also mentioned eating "cook-a-rooks", a flower that he described as tasting very bitter. (Tr. at p. 1692.)

Languages Paul Harmon heard spoken on Woody Island were a mixture of Russian and Aleut. (Tr. at p. 1672.) He testified that there was much visitation between people from Kodiak and people from Woody Island, particularly around the holidays. (Tr. at pp. 1672-1673.)

Paul Harmon's description of minute details of life on the Island was obviously not fabricated. Paul lived on Woody Island for a period of time in 1970 and he considered Woody Island to be his home and the center of Native family life, as well as the place to which he intended to return when absent therefrom.

6. **James Hartle**, (also known as James Harmon) the half-brother of Paul Harmon, Maurice Harmon, and Mitch Komm Gregoroff, is another Native Woody Islander who lived for a period of time on Woody Island in 1970. He also testified live at the hearings. James Hartle donated for use in these proceedings a collection of photographs he took or collected, labeled the "Hartle Collection", Phot 15-1 through 15-12. These photographs, taken during the 1950s on Woody Island, depict Ella Chabitnoy, Mitch Gregoroff, Cecil Chabitnoy, Maurice Harmon, John Maliknak, James Fadaoff, Anastasia Fadaoff-Harmon, James Hartle, Leanna Harmon, and photographs of these children playing at the "jumping hill" on Woody Island that is the mass grave burial site from victims of the 1918 Spanish Flu Epidemic.

James Hartle testified he started to live on Woody Island in 1952, and that he had lived in the Fadaoff house, as well as the structure that became known as the Harmon house. (Tr. at pp. 1628-1629.) During the summer months he did quite a bit of swimming in the lakes on

Woody Island, and that he also fished for trout in Lake Una. (Tr. at p. 1630.) From his own collection of photographs, James Hartle identified a picture of his mother, Anastasia, and himself "directly behind our home." (Tr. at pp. 1630-1631; Phot 15-4.) He also identified Phot 15-6 as being a picture of his sister Leanna Harmon, and his brother Maurice (who testified at the hearing in Anchorage), Danny, and himself playing on Woody Island. The witness also identified a number of other family photographs taken on Woody Island. (Tr. at pp. 1631-1632.)

James Hartle testified that his family had used an oil stove in the Harmon house to keep warm during the winter months. (Tr. at p. 1632.)

When posed with the riddle "What's the difference between 'WIGS' and 'WITS'?", James Hartle answered that WITS was "Woody Island Territorial School" before Alaska became a state. WIGS was "Woody Island Grade School after." (Tr. at p. 1633.) When growing up on Woody Island, in the North Village area he recalled Ms. Frump as having had two children with her, Harold and Mary Ann, in the Frump house; "Angeline and Nicholas, Wilfred, and Johnny" living in the Pavloff house; and in the South Village area in the Simeonoff there lived "my Aunt Natalie, my Uncle Kelly, and their children...seven, approximately." (Tr. at p. 1635.) In the Fadaoff house, James Hartle testified that there lived his Uncle Edson and his Aunt Mary and their children. (Tr. at p. 1636.)

The only employment opportunities on Woody Island, according to James Hartle, were fishing, and working for the FAA. (Tr. at p. 1636.)

James Hartle testified he was on Woody Island several times in 1970. Tr. at p. 1651. The purpose of his visiting Woody Island in 1970 was "we fished during the commercial

salmon season that year, and we would go over there on the weekends when we had come into town; spend time over time camping, etc." (Tr. at p. 1637.) James Hartle spent more than one weekend on Woody Island. (Tr. at p. 1637.) ³⁶ **Other persons whom James Hartle identified as having lived for a period of time on Woody Island in 1970 included Nick Pavloff, Johnny Maliknak, his uncle Cecil Chabitnoy, whom James Hartle testified "did frequent the Island in 1970...probably checking the Chabitnoy home."; Mitch Gregoroff, whom James Hartle testified would "visit, frequenting the area there."; Paul Harmon, whom James Hartle testified "I fished with that year."; and Rudy Sundberg, Jr., whom James Hartle stated "was living on the Island at that time off and on."** (Tr. at pp. 1637-1640.)

While on Woody Island in 1970 he visited his brother Danny's grave site, and "would sweep it off and pull the weeds and stuff around it." (Tr. at p. 1640.) When he went to Woody Island, James Hartle would often go ashore and camp "up behind the old homestead", and he did this "several times over the course of the summer." (Tr. at pp. 1645-1646.) James is interested in obtaining a one and a half acre shareholder home site on Woody Island, and when shown Chart No. 26, the shareholder home site chart prepared by his brother Mitch Komm Gregoroff, James Hartle testified that he would choose Site 2, located at a part of the Island called Garaboon. (Tr. at p. 1641.) James Hartle described this place as having "a very nice view point of, of the ocean, Long Island, and -- nice place." (Tr. at p. 1651.) James

³⁶James Hartle was both physically present on Woody Island in 1970, and had the subjective intent to return thereto: "[T]his is where I was raised with my brothers and sisters and aunts and uncles, cousins. ... It had a lot of significance in that manner. **And it was my home...** Q. Nineteen-seventy, when you were at Woody Island, and each of those times that you were there, did you have any intention of returning or not returning to Woody Island? A. I had full intentions of returning." Tr. at p. 1651-52.

explained that Woody Island has special meaning for him, and that each time he was not at Woody Island "I had full intentions of returning." (Tr. at p. 1652.)

James explained that he has not been able to live on Woody Island recently because "there's no employment for me." (Tr. at p. 1655.) In 1970, James Hartle had spoken with his mother and stepfather about his interest in returning to Woody Island and that their reaction was "They were all for that. They would like to have moved too, and actually live back there." (Tr. at pp. 1656-1657.)

7. **Johnny Maliknak**, who also lived on Woody Island during 1970, has a long family connection with Woody Island. He is related to Nicholas William Pavloff, Sr. by virtue of having the same mother, Angeline Pananarioff (1902-1972). Angeline Pananarioff had married Woody Island villager Steven Maliknak (1901-1958). Johnny Maliknak has lived on Woody Island his entire life, and was on Woody Island continuously during 1970. (L-Chart 34; L-Doc 108 at Tab 4, p. 2.) At page 51 of his recommended decision, the ALJ agreed that "There is no dispute that his permanent residence throughout his lifetime, including on April 1, 1970, was in the area claimed to be the village of Woody Island. Nor is there any dispute that he lived in that area for a period of time in 1970." Accordingly, there is no question as to Johnny Maliknak being a permanent resident of Woody Island who actually lived there for a period of time in 1970.

8. **Anita Elizabeth Sundberg Hartman** (1937-1998) is another Leisnoi shareholder who lived on Woody Island for a period of time in 1970. Anita was the offspring of Woody Island villager/Leisnoi shareholder Jenny Pestrikoff (1917-1972) and Woody Island villager/Leisnoi shareholder and 1970 resident Rudolph Sundberg, Sr. Her grandfather was

Woody Island villager Rudolph Sundberg, Sr. (1857-date of death unknown). Anita was married to Leisnoi shareholder Richard Hartman and they have two children who are Leisnoi shareholders, Geneva Margie Hartman (born 1956) and Richard Charles Hartman (born 1961). (L-Chart 30; L-Doc 108 at Tab 4, p. 10.) The Sundberg homesite in the Woody Island village is located on the original Nicholai Pavloff homestead (US Survey #1676) and is discussed by archaeologist Chris Wooley as Site 5 in his Archaeological Report entitled "A Walk in Time: Woody Island's History, Use and Occupancy", L-Doc A9. **Anita's presence in the village in 1970 fishing and gathering berries is verified by the testimony of her sister, Esther DeNato.** (Tr. at p. 2810.)

Anita Elizabeth Sundberg Hartman died on April 1, 1998 (L-Doc 279), so she was unavailable to testify at the hearings held just a few months later in August of 1998. Her April 12, 1995 affidavit (L Doc 122) demonstrates that although her family also had a house in Kodiak, "throughout the 1960's on a very regular basis" she and her family members "made frequent trips back to our home on Woody Island" and that "I consider Woody Island as my home." She also stated "I would be returning to Woody Island regularly as I did in the past with family members were it not for my medical condition."

The RD contains an erroneous recommendation at page 48 that the Board should strip Anita Elizabeth Sundberg Hartman of her 1970 residency status. This Board should not adopt the somewhat mocking attitude espoused in the RD that, in essence, besmirches the Native lifestyle and equates traditional Native activities such as fishing, hunting game, and gathering berries as merely "recreational in nature". See, RD at page 48. This recasting of traditional Native activities as being nothing more than "mere recreation" is a flawed theme that runs

throughout the recommended decision. See, RD at pages 40³⁷, 42³⁸, 43³⁹ 48⁴⁰, 60⁴¹, 70⁴², 72⁴³,

³⁷According to the RD, "Respondents and their anthropological experts simply placed too much emphasis upon any tie or connection a native may have to Woody Island and any expression of desire to return or go to Woody Island." RD at page 40. The Board should not ignore the crucial language in the definition of residence set forth in 25 CFR 43h.k(k): "It is the center of the Native family life of the applicant to which he has the intent to return when absent from the place. **A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually living there on that date, if he has continued to intend that place to be his home.**" (emphasis added) Likewise, the RD implies that this Board retroactively, and to the prejudice exclusively of the Native Woody Islanders but not the thousands of other Natives who were granted benefits under the Act, must alter the instructions given more than 25 years ago to Natives enrolling for benefits under the Alaska Native Claims Settlement Act. The instructions for completing the permanent residency form, Stratman Exhibit 9, informed the Natives that with respect to Column 16, "Your permanent residence as of April 1, 1970" as follows: "The place you name here is where you will be enrolled if you are found eligible under the requirements of the Act. **You need not have been physically present in that place on April 1, 1970, but you must have some ties back to that place** as outlined in section 43h.1(k) of the regulations." Stratman Exhibit 9 (emphasis added). Likewise, the recommendation at page 40, that some ties to a village coupled with an intent to return does not qualify for residency, is inconsistent with *Afognak*: "In other words **as long as a Native has some ties with the village and intends to return there, then he may be enrolled to that village as a permanent resident**, irrespective of the fact that he may actually be living elsewhere." *Afognak*, Recommended Decision at p. 5 (emphasis added).

³⁸Rejecting the definition of residency at 25 CFR 43h.1(k), the RD suggests "[A] love of Woody Island and an intent to return do not establish permanent residency." RD at page 42.

³⁹"[N]early all did not return to live but merely to use the island ... on daytrips or very brief overnight stays. That use was often recreational in nature." RD at page 43.

⁴⁰"There are only vague references to picking berries and fishing (which may have been recreational in nature)..." RD at page 48 [parenthetical text by the ALJ].

⁴¹The Paganos "merely vacationed at Woody Island occasionally on daytrips." RD at page 60.

⁴²"While the Redick's clearly spent some time on Woody Island during the decade ending in 1970, including 1970, as confirmed by Christina Hoen, Esther DeNato, and others, their use was mostly recreational..." Recommended decision at page 70.

⁴³Bruce [Robertson] testified that his father 'frequented' Woody Island in 1970. At the time he considered Woody Island to be his 'home away from home.' That year he and his dad made

73⁴⁴, 77⁴⁵, 80⁴⁶ The recommended decision is mistakenly based upon minimizing the significance to Natives of hunting and gathering on Woody Island, visiting ancestral grave sites in the village, visiting family dwellings, and spending time with other Natives in the village to which the Native Woody Islanders have such longstanding ties and heritage as well an intent to return. To the ALJ, spending time hunting and gathering on Woody Island has no more cultural significance than pulling over at a highway rest stop, or taking the children to a McDonald's. He misses the point. The ALJ has failed to give proper deference to the significance Natives attach to their spending time with their relatives in the village where they were raised, where their ancestors or brothers are buried, where their parents and grandparents and great-grandparents were born, married, and lived their lives. Their linkage with Woody Island is an important part of their Native identity.

Dr. Nancy Yaw Davis, a cultural anthropologist who obtained her Ph.D. in anthropology from the University of Washington in 1971, a master's in anthropology from the

15 to 20 or more daytrips to the island in their boat to fish, swim, hunt rabbits, and beachcomb. ... [They] merely recreated there..." Recommended decision at pages 71-72.

⁴⁴"[Edward Ward] merely recreated there..." Recommended decision at page 73.

⁴⁵[Anna Kerr Blinn Bowers'] testified ... that she would like to live on Woody Island if she had a chance.... Her testimony that she visited Woody Island 'often' is vague. In 1970 she visited for only two or three daytrips, which is less than 'often.' ... [H]er use was primarily, if now wholly, recreational." Recommended decision at page 77.

⁴⁶"Beginning in the early 1960's, [Fred Zharoff] ... began frequenting Woody Island for recreational purposes, including camping, hiking, picking berries, and hunting rabbits. They also engaged in subsistence activities, including cutting firewood, hunting seals and ducks, and fishing. In 1970 he went there with his wife on one occasion to hunt rabbits. He thought 'that if [he] ever got a chance to live permanently on Woody island [he] would like to do so.' ... His use of Woody Island was primarily recreational..."

University of Chicago in 1965, (Tr. at pp. 3404-3406) has researched and published in the field of cultural anthropology in the Central North Pacific Alutiiq area (Tr. at pp. 3407-3441), and been qualified as an expert in numerous Native Village certification cases in Alaska, such as Kaguyak, Chitina, Point Possession, and Chickaloon (Tr. at pp. 3436-3438), described her "understanding of Woody Island people that is a different kind of understanding than just the structures and maps. It's the people and their connection to a place, and perhaps more importantly to themselves, to each other over time linked with Woody." (Tr. at p. 3457.) When the cultural anthropologist was asked what she meant by the phrase "actually lived for a period of time", she defined it as meaning either an overnight stay, a visiting pattern, berry picking, hunting, or "what happens to the person when they go -- that recharges the, the soul. So, that's a kind of living that keeps you, and you going wherever you are economically for the rest of the, the year until the next time, the next month when you can go back and recharge your soul in another, another time." (Tr. at p. 3457.) This "recharging of the soul"⁴⁷ is a more accurate description of what the Woody Islanders felt and did when spending time in the village in 1970 than the besmirchment of their fishing, hunting, gathering, and spending time with the family in the village as being "mere recreation."⁴⁸

⁴⁷Making a similar point, Charles Naughton eloquently described how he merely "exists" when in a city, but "lives" when he is on Woody Island: "I exist in Anchorage but live in -- you know, I live on Woody Island." Deposition of Charles Naughton at p. 28.

⁴⁸Cultural anthropologist Chris Wooley defended the fishing, hiking, hunting and gathering on Woody Island as Native activities that amount to living on Woody Island for a period of time in 1970. When asked by counsel for protestant whether these activities were "perfectly consistent with the cultural patterns and lifestyle of, of non-Native Kodiak City residents at the time", the anthropologist responded "Different cultural matrix. Different background. Different family heritage. Different ties to different places. They didn't grow up in

- 9 **John Chya**
- 10. **Mary Chya**
- 11 **Edward Chya**
- 12. **John William Chya**
- 13. **Tamera Rae Chya**
- 14. **Michael George Chya**
- 15. **Nova Lenore Chya**

The Chya family are another group of Native Woody Islanders who lived on Woody Island for a period of time in 1970 and had longstanding family ties to Woody Island. **John William Shaya, Sr.** (the name spelling later referred to as Chya) (1904-1984) was a Woody Island Villager who was raised in the Mission on Woody Island, was properly enrolled to the Native Village of Woody Island and became a Leisnoi shareholder. His father, Paul Shaya, Sr. (1882-1918), was a mission child and Woody Island villager who was married on Woody Island, died on Woody Island, and is buried on Woody Island. John's mother was Woody Island villager and mission child Mary Brown (1886-date of death unknown). During her lifetime, John's mother Mary Brown was also married to and begat children by Woody Island villager Michael Pestriakov. John Chya, Sr. married Leisnoi shareholder and 1970 Woody Island Village resident **Mary Shuravloff** (1921-1996). They had 13 children who are or were Leisnoi shareholders: Woody Island Village 1970 resident **Tamera Rae Chya** (1964-1996); 1970 Woody Island Village resident **Edward Robert Chya** (born 1963); Woody Island Village 1970 resident **Nova Chya** (1961-1988); 1970 Woody Island Village resident **Michael George**

Minnesota. They didn't grow up in places outside and come up to work for the Government ... on a VOR tech site." Tr. at pages 2300-01. Chris Wooley's testimony is consistent with the ANCAB's observation "that traditionally Native activities and customs, such as berry picking ... hunting and fishing... which are still carried on by Natives... are not rendered less native in character merely because, in 1970, non-Natives also engaged in them." *Eyak*, VE #74-75 at p. 33.

Chya (born 1958); 1970 Woody Island Village resident **John William Chya, Jr.** (born 1957); Virginia Lee Chya (born 1952); Jonna Christine Chya (born 1950); Norma Dale Chya (born 1949); Dorothy Gail Chya (born 1948); Nettie Carole Chya (born 1944)⁴⁹; 1970 Woody Island Village resident Walda Chya Hoff (born 1943); and Betty Joan Chya (born 1940). (L-Chart 4; L-Chart 7; L-Doc 137; and L-Doc 108 at Tab 4, pp. 10-12.)

Mary Shuravloff Chya testified that in 1970 the family frequently went over to Woody Island to hunt, fish, and pick berries. See, deposition of Mary Chya at page 11. Mary Chya confirmed that as of April 1, 1970 Woody Island was the permanent residence of John Chya. See, deposition of Mary Chya at p. 12. Mary Chya is also enrolled to the Native Village of Woody Island. John and Mary Chya had several children who were minors as of April 1, 1970: John William Chya, Jr., Edward Chya, Tamara Rae Chya, Michael Chya, and Nova Chya. These children are automatically entitled to the same Woody Island permanent residency status as their parents. *Manley Hot Springs*, VE #74-6 at p.27.

Mary Chya's deposition testimony at page 11 about herself and her family having frequented Woody Island in 1970 to hunt, fish, and gather berries plainly establishes that they met the test for permanent residency status. She testified at pages 12 and 32 of her deposition that **in 1970 they would borrow either the Hoen or the Chabitnoy residence on Woody Island when they spent the night in the village.** Mary Chya "took it for granted" that Woody

⁴⁹In a March 24, 1998 interview with Kathleen Putman, L-Doc 181, Nettie Chya described how she and her many siblings would frequently go to Woody Island during the summertime after her parents had moved to Kodiak. When her father "was growing up, and he was in the Mission, and he was there during the flu epidemic and they had to take part in that and it wasn't a happy time, you know, but he -- it was hard for him to talk about it sometimes."

Island “was part of our land.” Deposition of Mary Chya at page 14. She explained that her husband was born and raised in Woody Island, his parents lived there, her grandparents were from Woody Island, she had frequently gone to Woody Island with her father, and “we liked Woody Island.” Deposition of Mary Chya at pages 29-30, 32.

Edward Robert Chya’s recorded interview reflects that his mother considered Woody Island to be part of their Native heritage, and a place where they Chya children “could go back and live on there and have it be a part of the family.” See, March 24, 1998 recorded interview of Edward Robert Chya, L-Doc 81 at page 3. He stated that Mary Chya spoke about having her children go back and live on Woody Island, and viewed it as their ancestral home. Id. at pages 3-4. Edward Chya stated that he would “love to” move to Woody Island. Id. He described how “we used to go over there ‘cause it was kind of private and it’s kind of -- it was real peaceful.” Id. at page 4. Edward Chya confirmed that his grandfather, Paul Chya Sr., is buried on Woody Island. Id. at page 6.

The presence of the Chya family on Woody Island in 1970 is verified by the deposition testimony of deceased Native Woody Islander Karl Armstrong. Mr. Armstrong testified at page 42 of his deposition that in 1970 he spent five weeks on Woody Island during the period April through early October, 1970 and that during that period of time the Chya family came to the house where he was staying on Woody Island. See, Deposition of Karl Armstrong at page 43.

In his March 19, 1998 interview with Kathleen Putman, Michael Chya described having played on the beach and berry picked on Woody Island. He recounted that his father, John Chya, Sr., used to tell him a lot of stories about Woody Island, including how they used to

make ice on Woody Island while his father had been growing up. He stated that if he had an opportunity to live on Woody Island, "Oh, definitely. Oh, yeah, I'd love to live over there. Oh, yeah. Oh, yeah. Oh, yeah, I would." L-Doc 85.

Given their long family ties to the village, their presence in the village in 1970, and their stated desire to return, the Chyas should be found to have been permanent residents of Woody Island who lived there for a period of time in 1970. This Board should correct the RD to the contrary.

- 16. **Marie Redick Ungar**
- 17. **Larry T. Redick**
- 18. **William W. Redick**
- 19. **Robert J. Redick**

Marie Olivia Redick Unger (1932-1935) and her children, **Larry, William and Robert Redick** are Native Woody Islanders who lived on Woody Island for a period of time during 1970 and have longstanding family ties to Woody Island Village. Marie, a Leisnoi shareholder, is the daughter of Woody Island villager Pariscovia "Polly" Inga. Marie's grandmother was Woody Island villager Mariia Liknak (born 1887, died and buried on Woody Island in 1920). Her grandfather was Woody Island villager Alexis Inga. Marie's great grandfather was Woody Island villager and chief Nikolai Liknak, who was known as Chief Yellow Pants, because he wore yellow rain slickers. (Chief Yellow Pants gave a house on Woody Island to Ella Chabitnoy. Deposition of Tina Hoen at page 19.) Marie's great grandmother was Woody Island villager Akilina Alazhak. Marie's aunt Marcia Inga was also a Woody Island villager, as was her aunt Irene Inga, her uncle Mike Inga, and her uncle Rufus Inga.

Marie Redick Unger is the mother of Leisnoi shareholder, Woody Island villager David W. Redick, who lived on Woody Island for a period of time in 1970; Woody Island villager and Leisnoi shareholder **Larry Thomas Redick** (born 1960), who lived on Woody Island for a period of time in 1970; Leisnoi shareholder and Woody Island villager **Robert James Redick** (born 1953), who lived for a period of time on Woody Island in 1970; and Woody Island villager, Leisnoi shareholder **William Ward Redick** (born 1952), who lived for a period of time on Woody Island in 1970. These children are the great-great grandchildren of Chief Yellow Pants, and thus the Redick family can trace its Native heritage on Woody Island back many generations. Marie is the aunt of Leisnoi shareholder Thomas Michael Swenson (born 1971) and Leisnoi shareholder Jason J. Swenson (born 1973). Marie is the sister of Leisnoi shareholder Thomas Michael Swenson, Jr., who is married to Leisnoi shareholder Phyllis Patricia Unk. (L-Chart 9; Feichtinger Investigative Report L-Doc 108 at Tab 4, pp. 13-14; and Deposition of Marie Unger at p. 35.)

Once again, the RD mistakenly encourages the Board to rely upon perceived conflicts between the answers to Columns 17-21 and the answer to Column 16 on the enrollment application to try to defeat the permanent residency status of Native Woody Islanders. See, recommended decision at page 69. As was noted in *Kasaan*, conflicts between Columns 16 and 17-21 do not raise a substantial doubt as to the permanent residency status of an Alaska Native. In fact, the information contained in Columns 17-21 is pertinent only to Alaska Natives who lived out of state as of the time of filing an application for enrollment. 25 CFR §43h.4 makes this point abundantly clear:

"a) **Permanent Residents of Alaska.** A Native permanently residing in Alaska at the time of filing his application for enrollment shall be enrolled in the region and village or other place in which he was a permanent resident on April 1, 1970.

b) **Non-Residents of Alaska.** A Native who at the time of filing his application for enrollment is not a permanent resident of one of the regions in Alaska shall be enrolled according to the following order of priority:

1. In the Thirteenth Region, if it is formed and he so elects, or
2. In the region where he resided on April 1, 1970, if he had resided there without substantial interruption for two or more years, or
3. In the region where he previously resided for an aggregate of 10 years or more, or
4. In the region where he was born, or
5. In the region from which an ancestor came."

25 CFR §43h.4.

Pursuant to the above federal regulation, Natives who permanently resided in Alaska as of April 1, 1970 were to be enrolled in the villages of which they were a permanent resident on April 1, 1970. The information contained in Columns 17-21 of the enrollment application was pertinent only to non-residents of Alaska.